IN THE HIGH COURT OF JUDICATURE
ANDHRA PRADESH
AT HYDERABAD

THE HON'BLE MR JUSTICE J.CHELAMESWAR
and
THE HON'BLE MR JUSTICE D. APPA RAO

WRIT PETITION.NO :26656 of 2007

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Dated: 19th January 2007.

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Between:

M/s. Kitti Steels Ltd., 126, Pogalguda (Village),
Yamnampet, Industrial Estate, Ghatkesar, R.R.District.

..... PETITIONER

AND

The Deputy Commissioner of Income Tax, Circle 2 (1),
Hyderabad and another.

.....RESPONDENTS

THE HON'BLE SRI JUSTICE J.CHELAMESWAR
AND

THE HON'BLE SRI JUSTICE D.APPA RAO

W.P.NO.26656 OF 2006
And
W.P.M.P.No.1235 of 2007

ORAL ORDER:
(Per the Hon'ble Sri Justice J.Chelameswar)

The 1st petitioner is a Limited Company and the 2nd petitioner is its Managing Director. It is stated in the affidavit filed in support of the writ petition that the 1st petitioner is declared to be a sick industry by the BIFR on 21-04-2006.

A copy of the order of the BAFR is filed in the material papers filed along with the writ petition. At Paragraph No.9 of the said order, it is recorded by the BIFR that the 1st petitioner company herein has become sick industrial company as on 31-03-1999. The relevant portion of the same reads as follows:

> " After considering the submissions made and keeping in mind AAIFR's order dated 1.11.2004 in Appeal No.263/2002 filed by KSL, the Bench was satisfied that the company had become a sick industrial company as on 31.3.1999 in terms of Section 3(1)(o) of SICA and accordingly declared it to be so. Accordingly, the company's Case Nos. 114/2003, 272/2004 and 278/2004 would become infructuous."

Orders under Sections 201 and 201(1A) of the Income Tax Act, dated 28-02-1997, were issued by the Income Tax Officer, Ward-5(3), (TDS), Hyderabad, demanding payment of an amount of Rs.25,88,335/- from the 1st petitioner. The details of such demand as per the counter affidavit filed in the writ petition are as follows:

"Financial Year-1994-95:
Demand u/s.201 for non remittance
of tax deducted .. Rs.4,53,458
Interest u/s.201(1A) on the
default amount for the period of default .. 1,30,394

Financial Year-1995-96:
Demand u/s.201 for non remittance
of tax deducted .. Rs.13,61,031
Interest u/s.201(1A) on the
default amount for the period of default .. 2,49,492

Financial Year-1996-97:
Demand u/s.201 for non-deduction
of tax at source .. Rs. 3,93,960

.. Rs. 25,88,335

Aggrieved by the same, the 1st petitioner carried the matter in appeal before the Commissioner of Income Tax (Appeals)-V, Hyderabad. By an order dated 14-12-2001, the appeal

was partly allowed. Dealing with the demand of the appellate authority observed that "**...no basis or details were mentioned in the order except raising the demand**". Further, at Paragraph No.8 of the appellate order, it is observed that the order under appeal was very cryptic and not a speaking order, in the following words.

> "8. I have carefully considered the facts of the case and the submissions of the appellant. There is no doubt that the order passed by the Assessing Officer is very cryptic in nature and cannot be said to be speaking order. However, considering the facts on record and the submissions made by the appellant, the appeal is disposed or under."

Insofar as financial year 1995-96 is concerned, the appellate authority recorded a finding at Paragraph No.10.1 that the 1st petitioner is not liable to deduct certain amount of tax at source, to the following effect:

> " 10.1 Accordingly, it is held that the appellant was not liable to deduct tax at source on payment of salary and remuneration amounting to Rs.1,65,360/- and Rs.1,20,800/- respectively on the ground that no such payment was actually made even though the amounts were credited in the books of accounts

during the financial year 1996-97."

It is further held at Paragraph No.10.4, that a demand of Rs.2,52,027/- as well as the consequential interest thereon under Sections 201 and 201(1A) of the Act, pertaining to the tax deductible at source on the dividend payments, is not sustainable and the same are deleted. Paragraph No.10.4, reads as follows:

> " 10.4 So far as TDS on account of dividend payments is concerned, the provision of sec.194 of the Act is very clear. The appellant was liable to deduct tax at source on the dividends before making any payment. However, since no payment was made in this case and the Assessing Officer has not given a finding to the contrary, the demand raised u/s., 201 of the Act amounting to Rs.2,52,027/- as well as consequential interest charged U/s.201 (1A) of the act, cannot sustained and hence, the same are deleted."

Coming to the financial year 1996-97 is concerned, the appellate authority directed the Assessing Officer to verify whether certain payments of salaries and remunerations were actually made to the staff and the Director of the company during the said financial year and on verification, if it is found

that the payments were actually made, the demand would stand confirmed. The relevant portion to the above effect at Paragraph No.11, reads as follows:

> " … Form the submissions of the appellant, it is not clear as to whether the salaries, and remuneration were paid to staff and the Directors, Therefore, the Assessing Officer is directed to verify if such payment was actually made and in the event of payment having been made during the financial year 1996-97, the liability of the appellant as computed by the Assessing Officer Under Section 201 (1) of the Act, will stand confirmed.
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> In the result, the appeal is partly allowed."

In substance, the appellate order straightaway held that out of the demand of Rs.25,88,335/- originally made by the I.T.O., by his order dated 28-02-1997, Rs.5,38,187/- is unsustainable apart from holding that the interest charged under Section 201(1A) of the Act on the amount of Rs.2,52,027/- for the financial year 1995-96, is also unsustainable though it was not quantified by the appellate authority.

A consequential order came to be passed by the I.T.O., concerned on 27-02-2002. Curiously, with reference to the financial year 1995-96, the I.T.O., refers only to the deletions made by the appellate

authority at Paragraph No.10.4, of the appellate order and no deduction is made of the amounts specified in Paragraph No.10.1 of the order, amounting to Rs.2,86,160/- and passed a revised demand order for an amount of Rs.23,01,655/-.

It appears from the affidavit filed by the petitioners and the counter affidavit filed by the Department that the abovementioned demand includes certain amount, allegedly deducted at source by the 1st petitioner from out of the payments made by it to one M/s. Ramdas & Company. The said M/s. Ramdas & Company filed its income tax returns for the relevant assessment year, (though it is not very clear from the pleading) claiming credit for certain amounts allegedly deducted by the 1st petitioner herein. Even according to the counter affidavit, the said claim of M/s. Ramdas & Company was rejected by the Department. Therefore, the said M/s. Ramdas & Company approached this Court earlier by way of W.P.No.35753 of 1998, wherein the 1st petitioner herein was the

3rd respondent. The said writ petition came to be disposed of by an agreed/consent order dated 27-06-2000. The petitioner herein and the abovementioned M/s. Ramdas & Company, represented by its partner Smt. Ranjana Varma, were

directed to appear before the Assistant Commissioner concerned for determination of the amounts actually deducted by the 1st petitioner herein while making payment to the said M/s. Ramdas & Company. It is to be mentioned here that the Income Tax Department, represented by two of its officers, was a party to the abovementioned agreed/consent order. However, by an order dated 27-03-2001, the Deputy Commissioner of Income Tax (Appeals)-III, Hyderabad, passed an order, after hearing both the parties as directed by this Court, raising a demand of only Rs.13,57,219/-, insofar as the assessment year 1996-97 is concerned.

Aggrieved by the said determination, the 1st petitioner filed an appeal before the Commissioner of Income Tax (Appeals)-III, Hyderabad. By an order dated 20-01-2003, the appellate authority allowed the appeal in-toto, on the ground that the order dated 27-03-2001, is an order without jurisdiction, leaving it open to the Assistant Commissioner concerned, to make a determination as was directed by this Court while disposing of W.P.No.35753 of 1998. Admittedly, such a determination has never come to be made even as on today.

In the meanwhile, a criminal case in C.C.No.9 of 2000, came to be registered by the Department

against the petitioners before the Special Judge for Economic Offences, Hyderabad under Sections 276B and 276C(2) r/w Section 278B(1)(2) of the Income Tax Act.

The case of the petitioners is that in view of the fact that the liability of the petitioners to pay tax for the financial year 1995-96, is not finally determined so far by the Department though the petitioners are willing to pay any amount of tax, etc., legally due from them on an appropriate determination of the same in the light of the earlier order of this Court in W.P.No.35753 of 1998, dated 27-06-2000. It is specifically averred by the petitioners in the affidavit filed in support of the writ petition at Paragraph No.17 that on 05-12-2006, they addressed a letter to the 1st respondent herein, offering to pay the entire amount of tax and other statutory dues with reference to the abovementioned financial years and also expressing their willingness to compound the offence in accordance with law. The 1st respondent did not respond to the said letter. Hence, the present writ petition with the prayer as follows:

> " For the reasons stated in the accompanying affidavit, the petitioners herein prays that this Hon'ble court may be pleased to issue an appropriate Writ, order or direction more particularly one in

> the nature of Writ of Mandamus directing the Respondents to pass appropriate orders in the application made by the Petitioners on 5-12-2006 to decide the dispute regarding the payment of compounding fee on the amount payable under the Income Tax Act, 1961 to the respondents for the assessment period of 1995 to 1998 till the said matter is decided not to take any coercive steps, and to pass such other order or orders as this Hon'ble court may deem fit and proper in the circumstances of the case."

In view of the peculiar facts of the case, more specifically, the earlier order of this Court in W.P.No.35753 of 1998, dated 27-06-2000 and also in view of the fact that the determination, pursuant to the said agreed order, never came to be made, we thought it fit to call upon the respondents to file a counter affidavit at the stage of admission itself, in order to give a quietus to the prolonged litigation.

The fact that the final tax liability of the petitioners insofar as the financial year 1995-96 is concerned, is not yet determined, is not controverted by the respondents in their counter affidavit. Regarding the claim for credit of certain deductions made by the petitioners at Paragraph No.8 of the affidavit filed in support of the writ petition, the

respondents state as follows in their counter affidavit:

> " 5. It is further submitted that with reference to the contents in para 8 of the writ affidavit that the respondents ought to have deducted an amount of Rs.5,81,000/0 from the demand raised against it, it is humbly submitted that the amount of Rs.98,000/- paid by it through Cathelic Syrian Bank Ltd., and further sum of Rs.1,95,000/- paid by it in terms of earlier orders of this Hon'ble Court in W.P.No.35753/1998 is being given credit against the demand raised. The other contention of the writ petitioner as mentioned in para 8 of writ affidavit relating to adjustment of Rs.2,88,000/- from the credit available with the Department, it is humbly submitted that the said contention is lack of related particulars. However, the said claim will be considered in accordance with law, on submission of related details with supporting documents by the writ petitioner……."

Stating so, the respondents claim as follows:

> " ……. The balance amount payable by the writ petitioner after giving credit to the above mentioned two payments is as under:

Demand as per the consequential order dated 27-02-2002 ..	Rs.23,01,655

Payment made on 26-11-1998	..	Rs. 98,000
Payment made on 28-06-2000	..	Rs. 1,95,000
Balance amount payable [excluding interest u/s.220(2)]	..	Rs.20,08,655

Insofar as the representation of the petitioners dated 05-12-2006 is concerned, the respondents take a stand at Paragraph No.7 of the counter affidavit as follows:

> " ..... It is further submitted that the orders of demand relating to TDS since vests with the 2nd respondents, the petitioner ought tohave submitted its representation to the said office instead of submitted to the 1st respondent who is not the authority dealing with the TDS matters....."

This court can only place on record its unhappiness on the state of affairs. It sounds strange to hear from the respondents that the petitioners made a representation to a wrong authority, while on the record of this case it is established that an authority without jurisdiction made a determination of the tax liability of the petitioners with reference to the

financial year 1995-96 is concerned, which was promptly set aside by the appellate authority, who is no other than his superior in the Department. If the officers of the Department are not sure of their jurisdiction, citizens can hardly be blamed for making a representation to a wrong authority. At any rate, the fact that such a representation was received by the 1st respondent is not disputed. The representation is categoric and the petitioners clearly desirous to pay the entire tax along with other dues and compound the offence. The relevant portion of the representation is as follows:

> "In view of the foregoing facts, the company prefers to compound the offences to put a stop to the long pending litigation in various forums and to mitigate the ongoing prosecution amicably to buy peace, apart from discharging the tax liability. Therefore the company desires to know the current position of demands outstanding under various sections with the dates of orders and the likely compounding fee payable, therefore kindly notify the quantum of financial liability of the company for compounding the offences in the light of the various orders passed by the department as mentioned above, to enable the company to file a suitable compounding petition before the Chief Commissioner of Income Tax for compounding the offence."

In such circumstances, we find the attitude of the Department wholly unjustified. We are of the opinion that the people cannot be prosecuted merely there is technical prejudice of law. We have already noticed that even according to the appellate order dated 14-12-2001, the original determination is absolutely laconic and without disclosing any basis. The consequential order dated 27-02-2002, as already observed is *ex facie* not in tune with the appellate order. Coupled with these factors, the willingness of the petitioners to pay the entire amount of tax legally due from them as and when the same is determined and also the willing ness to compound the offence, lead us to the conclusion that it would be just and appropriate, in the totality of the circumstances, to direct the respondents to determine the amount of tax and other charges legally due from the petitioners in the light of the order of the Commissioner dated 14-12-2001 and the earlier order of this Court in W.P.No.35753 of 1998, dated 27-06-2000, within a period of eight weeks from the date of receipt of a copy of this order and permit the petitioners to compound the offence complained in C.C.No.9 of 2000 referred to earlier. We further feel it just and proper in the background of the case that the

petitioners shall deposit an amount of Rs.15-00 lakhs with the

2nd respondent, within a period of two weeks from the date of receipt of a copy of this order, to establish their *bona fides* in making the assertion that they are willing to pay the entire amount of tax and other amounts legally due from them and also compounding the offence. The said amount shall be appropriated after the final determination of the tax liability of the petitioners, as indicated above, without prejudice to the authority of the respondents to recover any further sum, if really found due on such determination or the amount or a part of it, if it is found not, eventually, not due from the petitioners, shall be refunded to the petitioners forthwith.

In view of the order passed today, we are also of the opinion that it is also just and necessary to direct the respondents not to proceed with the prosecution of C.C.No.9 of 2000 referred above, against the petitioner.

For the foregoing discussion, with the above directions, the writ petition is disposed of at the stage of admission.

J.Chelameswar, J

D.Appa Rao, J

19th January, 2007
mrk

W.P.M.P.No.1235 of 2007

When the matter is listed today for pronouncement of the judgment, the present miscellaneous petition came to be filed by a third-party.

The entire dispute in the writ petition revolves around the allegation of the liability of the writ petitioner to deduct certain amounts towards income tax, which is allegedly required to be deducted by the writ petitioner while making payment to the present implead petitioner. The fact that there were certain transactions between the writ petitioner and the present implead petitioner is not in dispute, though there is some dispute about the liability to make the deduction as alleged by the department and also to the quantum of the money to be deducted. Earlier a Division Bench of this Court directed to determine these issues (the same was referred to in the judgment pronounced today) and such determination has not taken place so far.

In the circumstances and in view of the directions given today to the respondents to make the determination of the writ petitioner's liability for tax, we deem it appropriate to direct the respondents to afford an opportunity to the implead petitioner also while making such a determination.

With the above direction, the miscellaneous petition is disposed.

J.Chelameswar, J

D.Appa Rao, J

19th January, 2007
mrk